

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[EPA ACTION NE 1275]

REVISION TO STATE IMPLEMENTATION PLAN;

STATE OF NEBRASKA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: On May 23, 1983, the State of Nebraska submitted a revision to the State Implementation Plan (SIP) to comply with the federal requirements for new source review (NSR); this included both the Part D requirements for nonattainment areas and prevention of significant deterioration (PSD) in attainment areas. EPA reviewed these regulations and proposed to approve them on August 31, 1983. Today's rule takes final action to approve these regulations. The May 23 submission also included a regulation to comply with the stack height requirements of the Clean Air Act, as amended (Act). EPA reviewed this regulation and proposed to approve it based on a commitment by the state to revise the regulation to comply with the Federal requirements for public notice and hearing. This commitment has not yet been fulfilled by the state. Additionally, since the proposal was published, a decision has been rendered by the U. S. Court of Appeals for the District of Columbia Circuit, as explained later in this action, concerning EPA's stack height requirements. Consequently, today's rule takes no action on the state's stack height regulation.

EFFECTIVE DATE: This action is effective (insert date 30 days from date of publication).

ADDRESSES: Copies of the state submission are available for review during normal business hours at the following locations: Environmental Protection Agency, Air Branch, 324 East 11th Street, Kansas City, Missouri 64106; Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460; The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C., and State of Nebraska, Department of Environmental Control, 301 Centennial Mall South, Lincoln, Nebraska 68509.

FOR FURTHER INFORMATION CONTACT: Mary C. Carter at (816) 374-3791, FTS 758-3791.

SUPPLEMENTAL INFORMATION: On August 9, 1982, EPA received the Nebraska State Implementation Plan revision to comply with the requirements of Part D of the Clean Air Act. EPA took final action to approve certain portions of the submission on March 28, 1983 (see 48 FR 12715 for further information). EPA took no action on the NSR regulations at that time because the state indicated that these regulations were undergoing revisions to more closely parallel the federal requirements for new source review in nonattainment areas published on August 7, 1980.

The revised NSR regulations were submitted as part of a SIP revision by the Governor of Nebraska on May 23, 1983. That submission is the subject of today's action and is comprised of amendments to the following state regulations: Rule 4, "New and Complex Sources; Standards of Performance, Application for Permit, When Required," and Rule 1, "Definitions;" and two new regulations: Rule 4.01, "Prevention



of Significant Deterioration of Air Quality," and Rule 3A, "Stack Heights; Good Engineering Practice (GEP)."

New Source Review. Part D of the Clean Air Act, as amended, requires states to include specific new source review regulations in their SIPs for all areas that have not attained the National Ambient Air Quality Standards (NAAQS). Section 172(b)(6) requires plans to have a permit program for the construction and operation of new or modified stationary sources in accordance with the permit requirements of Section 173. Specific requirements are codified at 40 CFR 51.18(j). The permit program must assure that when a new source commences operation, there will be sufficient emissions reductions from existing sources to offset the increase in emissions from the new source and to assure reasonable further progress toward attaining the NAAQS; the permit program must require compliance with the lowest achievable emission rate; all sources in the state owned or operated by the permit applicant must be in compliance with all applicable state and federal emission limits; and the applicable implementation plan must be carried out in the nonattainment area in which the source is to be constructed.

EPA has reviewed the revisions to Nebraska Rule 4, "New and Complex Sources; Standards of Performance, Application for Permit, When Required," and the supporting definitions in Rule 1 and finds that these rules closely parallel Federal regulations and meet all requirements of Section 172(b)(6) and Section 173 of the Act, and the requirements for new sources in nonattainment areas published on August 7, 1980.

The previous lack of an approved SIP which included new source review regulations for nonattainment areas in Nebraska led to the imposition of the construction moratorium (on July 1, 1979), required by Section 110(a)(2)(I) of the Act, on all primary nonattainment areas in the state. This action will remove the construction moratorium in the primary nonattainment areas for which a Part D SIP revision has been approved by EPA.

Prevention of Significant Deterioration (PSD). Section 161 requires each implementation plan to contain emission limitations and other measures to prevent significant deterioration of air quality in each region which is designated attainment or unclassified under Section 107 of the Act. Specific requirements are codified at 40 CFR 51.24. In addition, EPA's regulations promulgated for areas which have no approved SIP are found at 40 CFR 52.21. The new Nebraska Rule 4.01 adopts the Federal PSD requirements by reference.

The EPA has reviewed the new Nebraska Rule 4.01, "Prevention of Significant Deterioration of Air Quality" and finds that this rule meets the requirements of 40 CFR 51.24.

Stack Heights. Section 123 prohibits stacks taller than good engineering practice (GEP) height and other dispersion techniques that would affect the emission limitations required for the control of any air pollutant to meet the NAAQS or PSD air quality increments. Specific requirements are found at 40 CFR 51.12(j), (k) and (l).

Before the state submits to EPA a new or revised emission limitation that is based on a demonstration of GEP, the state must notify



the public of the availability of the demonstration study and must provide opportunity for public hearing on it [see 40 CFR 51.12(j)].

EPA has reviewed Nebraska Rule 3A and finds that the requirements of 40 CFR 51.12(j) are not met by this Rule, as written. The deficiency in the language of the regulation has been discussed with the state. The state has committed to clarifying the language of the regulation accordingly. This commitment has not yet been fulfilled by the state. Additionally, on October 11, 1983, the U.S. Court of Appeals for the District of Columbia Circuit ordered EPA to reconsider portions of the stack height regulations for stationary sources under Section 123 of the Clean Air Act, and reversed other portions of EPA's stack height requirements. The remainder of the stack height regulations were upheld. See Sierra Club and Natural Resources Defense Council, Inc., v. EPA, Nos. 82-1384, 82-1412, 82-1845, and 82-1889 (D.C. Cir., October 11, 1983). Consequently, it would be inappropriate for EPA to take action on the Nebraska stack height regulation pending EPA's response to the court decision.

The May 23, 1983, submission discussed in this rulemaking was proposed for approval on August 31, 1983 (48 FR 39472). The reader is referred to the proposal for further discussion. No comments were received as a result of the proposed rulemaking.

**ACTION:** EPA approves the revisions to Nebraska Rules 4 and 1, and approves the new Nebraska Rule 4.01. EPA takes no action on Nebraska Rule 3A.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response, are available for public inspection at the EPA Region VII office.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Incorporation by reference of the State Implementation Plan for the State of Nebraska was approved by the Director of the FEDERAL REGISTER on July 1, 1982.

This notice of proposed rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended.

List of subjects in 40 CFR Part 52: Environmental Protection Agency, air pollution control, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, carbon monoxide, and hydrocarbons.

Date: \_\_\_\_\_

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Administrator